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Notice of Allowability

Application No.	Applicant(s)
09/760,067	PUSKARIC, VLADIMIR
Examiner	Art Unit
Ashwin Mehta	1638

The MAILING DATE of this communication appears on the All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINDER OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS. To of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPR	MAINS) CLOSED in this application. If not included appropriate communication will be mailed in due course. THIS This application is subject to withdrawal from issue at the initiative		
 This communication is responsive to papers received October 1, 20 The allowed claim(s) is/are 1-4 and 62-90. The drawings filed on are accepted by the Examiner. Acknowledgment is made of a claim for foreign priority under 35 U a) All b) Some* c) None of the: Certified copies of the priority documents have been received. Copies of the certified copies of the priority documents. 	03. S.C. § 119(a)-(d) or (f).		
International Bureau (PCT Rule 17.2(a)). * Certified copies not received: 5. Acknowledgment is made of a claim for domestic priority under 35 Ureference was included in the first sentence of the specification or in (a) The translation of the foreign language provisional application 6. Acknowledgment is made of a claim for domestic priority under 35 Urin the first sentence of the specification or in an Application Data Short	an Application Data Sheet. 37 CFR 1.78. In has been received. U.S.C. §§ 120 and/or 121 since a specific reference was included		
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. THIS THREE-MONTH PERIOD IS NOT EXTENDABLE. 7. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient. 8. CORRECTED DRAWINGS (as "replacement sheets") must be submitted. (a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached 1) hereto or 2) to Paper No (b) including changes required by the proposed drawing correction filed, which has been approved by the Examiner. (c) including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of			
each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d). 9. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.			
Attachment(s) 1 Notice of References Cited (PTO-892) 2 Notice of Draftperson's Patent Drawing Review (PTO-948) 3 Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No 4 Examiner's Comment Regarding Requirement for Deposit of Biological Material	5☐ Notice of Informal Patent Application (PTO-152) 6☑ Interview Summary (PTO-413), Paper No. attached. 7☑ Examiner's Amendment/Comment 8☐ Examiner's Statement of Reasons for Allowance 9☐ Other .		

Claim Objections and Rejections

The objections to claims 20 and 50, and the rejections of claims 8, 41-49, and 53-61under
 U.S.C. 112, 1st and/or 2nd paragraphs, are withdrawn in light of the claim cancellations.

Examiner's Amendment

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Lila Ackrad on December 18, 2003.

In the claims:

1. <u>Seed of hybrid maize variety</u> [Hybrid maize seed] designated 39K40, representative seed of said <u>variety</u> [hybrid 39K40] having been deposited under ATCC Accession number ______.

In claim 83, line 14, "the" was deleted, and the recitation, "of backcrossing to said inbred maize parent plant" was replaced with --(c) and (d)--.

In claim 83, line 16, --fourth or higher-- was inserted after "said".

In claim 88, line 14, "the" was deleted, and the recitation, "of backcrossing to said inbred maize parent plant" was replaced with --(c) and (d)--.

In claim 88, line 16, --fourth or higher-- was inserted after "said".

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3. Claims 1-4 and 62-90 are allowed.

REQUIREMENT OF ALLOWANCE UNDER 37 CFR §§ 1.801-1.809

4. The deposit statements in the specification on pages 7 and 42 are deemed in accordance with 37 CFR §§ 1.801-1.809. Therefore, no 35 USC § 112, 1st paragraph rejection has been maintained even though it is apparent that seed of hybrid maize 39K40 and seed of inbred maize varieties GE535658 and GE516223 are essential to the claimed invention and that their deposit is necessary for an adequate written description and enablement for the claimed invention. Since the application is otherwise in condition for allowance except for the needed deposit of 39K40, GE535658, and GE516223 seed, and since the Office has received written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office is authorized to mail Applicant a Notice of Allowance and Issue Fee Due together with a requirement that the needed deposit be made within THREE (3) MONTHS of the mail date of this letter (see 37 CFR § 1.809(c)).

Under 37 CFR 1.809(c)(d) an applicant is required to make a deposit of seed within three months after the mailing date of the Notice Of Allowance and Issue Fee Due. The time period for making a biological deposit, and an amendment to add the depository information to the specification, is no longer extendable. See 37 CFR 1.136(c) and 1.809(c), revised in Changes to the Time Period for Making any Necessary Deposit of Biological Material, 66 Fed. Reg. 21090 (April 27, 2001), 1246 Off. Gaz. Pat. Office 104 (May 22, 2001), effective for Notices of Allowability mailed on or after May 29, 2001. Amendments are no longer permitted to be filed

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after the payment of the issue fee. See 37 CFR 1.312, revised in Changes to Application

Examination and Provisional Application Practice, 65 Fed. Rge. 14865, 14869 and 14873

(March 20, 2000), 1233 Off. Gaz. Pat. Office 47, 50 and 54 (April 11, 2000), effective on May

29, 2000. Failure to make the needed deposit of seeds of 39K40, GE535658, and GE516223 will

result in abandonment of the application for failure to prosecute. The deposit statements in the

specification on pages 7 and 42, and all claims which refer to the instant seeds by name, must be

amended to include the deposit accession number. These amendments should be submitted

before the payment of the issue fee as an Amendment After Allowance under 37 CFR 1.312.

The statement of deposit in the specification shall contain:

- (1) The accession number for the deposit(s);
- (2) The date of the deposit(s);
- (3) A description of the deposited biological material sufficient to specifically identify and to permit examination; and
- (4) The name and address of the depository. (See 37 CFR 1.809(d)).

Contact Information

Any inquiry concerning this or earlier communications from the examiner should be directed to Ashwin Mehta, whose telephone number is 703-306-4540. The examiner can normally be reached on Mondays-Thursdays and alternate Fridays from 8:00 A.M to 5:30 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at 703-306-3218. The fax phone numbers for the organization where this

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application or proceeding is assigned are 703-305-3014 and 703-872-9306 for regular communications and 703-872-9307 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

December 18, 2003

Ashwin D. Mehta, Ph.D.

Primary Examiner Art Unit 1638